

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ALEXANDRE KOUZNETSKI & OXANA
DOUCHENKO,

Plaintiffs,

NOT FOR PUBLICATION
MEMORANDUM & ORDER
15-CV-3628 (CBA) (SMG)

-against-

DEPARTMENT OF TREASURY, INTERNAL
REVENUE SERVICE,

Defendant.

-----X
AMON, Chief United States District Judge.

Plaintiffs Alexandre Kouznetski and Oxana Douchenko (together “plaintiffs”) filed this pro se complaint on June 19, 2015, against the United States Department of the Treasury, Internal Revenue Service (“IRS”), seeking a credit for taxes they claim they paid but did not owe. Plaintiffs’ requests to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 is granted. However, the caption must be amended to name the United States as the defendant in place of the IRS.

Section 1346(a)(1) of Title 28 of the United States Code waives sovereign immunity for claims by taxpayers seeking a refund of wrongfully collected federal taxes. See United States v. Forma, 42 F.3d 759, 763 (2d Cir. 1994). However, to maintain a refund action the taxpayer must name the United States as a party, not the IRS. See 26 U.S.C. § 7422(f)(1); see also Metcalf v. IRS, No. 12-cv-2239, 2012 WL 2357761, at *2 (E.D.N.Y. June 19, 2012) (“Congress has not authorized federal court actions against the IRS.”). When, as in this case, there is misjoinder, a court must “order, upon such terms as are just, that the pleadings be amended to substitute the United States as a party” 26 U.S.C. § 7422(f)(2). Accordingly, the Clerk of Court is directed to substitute the United States as the sole defendant.

The Clerk of the Court is further directed to issue a summons to defendant the United States, and the United States Marshals Service is directed to serve the complaint, summons, and a copy of this Order on the defendant without prepayment of fees. The Clerk of Court is also directed to mail a copy of this Order to plaintiffs. The case is referred to the Honorable Steven M. Gold, United States Magistrate Judge, for pretrial supervision. The court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: Brooklyn, New York
June 30, 2015

/S/ Chief Judge Carol Bagley Amon

Carol Bagley Amon
Chief United States District Judge